

BEFORE THE DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
FOUR W OIL CO., LLC
FID: 71688

Respondent.

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Case No. 3604

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF
OPPORTUNITY FOR HEARING

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Order”) is issued pursuant to Neb. Rev. Stat. § 81-1507.

2. The Complainant is the Director of the Nebraska Department of Environment and Energy (“Department”).

3. The Respondent is Four W Oil Co., LLC, a Nebraska Limited Liability Company with its principal office located at 112 West 17th Street, Falls City, Nebraska 68355.

4. Complainant has determined the Respondent is in violation of the Nebraska Environmental Protection Act (“NEPA”), NEB. REV. STAT. §§ 81-1501 to 81-1532, and Title 119 of the Nebraska Administrative Code (“NAC”) – *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*.

II. JURISDICTION

5. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §§ 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of the NEPA and all rules, regulations, and orders, adopted and promulgated thereunder.



6. The Department is further charged with the duty to act as the state water pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.* NEB. REV. STAT. § 81-1504(4).

7. The Nebraska Environmental Quality Council adopted Title 119 of the NAC pursuant to Neb. Rev. Stat. § 81-1505.

III. COMPLAINT

8. Respondent is engaged in the extraction of subterranean crude oil and operates several oil wells in Richard County.

9. As part of Respondent's activities, Respondent operates a three-cell separation lagoon system which receives and treats a mixture of crude oil and process wastewater, and discharges treated effluent to waters of the State. The discharges of treated effluent flow to an undesignated tributary of an unnamed creek of the Big Nemaha River Basin (Segment NE2-11500).

10. The lagoon system is located on the real property legally described as:

The West Half of the Southeast Quarter and the East Half of the Southwest Quarter of Section Seven, Township One North, Range Sixteen East of the Sixth Principal Meridian, Richardson County, Nebraska, containing 151.5 acres, more or less.

11. On or about June 24, 2022, the Department issued NPDES Permit No. NE0130656 ("Permit") to Respondent. The Permit became effective on or about July 1, 2022, and expires on or about June 30, 2027.

12. On or about December 13, 2016, the Department issued NPDES Permit No. NE0130656 ("Prior Permit"). The Prior Permit became effective on or about January 1, 2017, and modified as of September 3, 2021, to reflect a change in ownership to Respondent. The Permit and Prior Permit are consistent in all material respects. Any reference to Permit shall also mean Prior Permit for dates prior to July 1, 2022.

13. Neb. Rev. Stat. § 81-1506(3)(c) make it unlawful to violate or fail to perform any duty imposed pursuant to the NEPA or the rules or regulations promulgated thereunder.

14. Respondent is required to comply with all conditions of the Permit. 119 NAC 14-001.01.

15. Respondent is further required to submit reports of monitoring results at the intervals specified in the Permit. 119 NAC 14-001.12D.

16. Appendix A, § 14(d)(iii), of the Permit specifies that Respondent must electronically submit quarterly Discharge Monitoring Reports (“DMRs”), via the NetDMR reporting tool, no later than 28 days following the end of the preceding quarter.

17. Part IV(5) of the Permit requires that all pits or ponds used to retain produced water “[b]e fenced, screened, or netted to prevent access by livestock, wildlife, and migratory birds, if free oil is likely to be discharged to the pits.”

18. On or about March 2, 2022, the Department conducted an inspection (“March 2 Inspection”), during which the Department inspector observed free oil in Lagoon Cell-2, which sits between Lagoon Cell-1 (the westernmost lagoon cell) and Lagoon Cell-3 (the easternmost lagoon cell).

19. During the March 2 Inspection, the Department inspector also observed that Lagoon Cell-2 did not have any fencing, screening, or netting to prevent access by livestock, wildlife, and migratory birds.

FIRST VIOLATION

20. On or about October 29, 2022, Respondent violated a reporting requirement contained in a rule or regulation adopted and promulgated pursuant to the Environmental Protection Act by failing to report monitoring results within twenty-eight days after the quarter ending September 30, 2022, as specified in Appendix A, § 14(d)(iii) of the Permit. 119 NAC 14-001.12D.

Respondent's failure to report monitoring results is a violation of Neb. Rev. Stat.

§ 81-1506(3)(c).

SECOND VIOLATION

21. On or about January 29, 2023, Respondent violated a reporting requirement contained in a rule or regulation adopted and promulgated pursuant to the Environmental Protection Act by failing to report monitoring results within twenty-eight days after the quarter ending December 31, 2022, as specified in Appendix A, § 14(d)(iii) of the Permit. 119 NAC 14-001.12D.

Respondent's failure to report monitoring results is a violation of Neb. Rev. Stat.

§ 81-1506(3)(c).

THIRD VIOLATION

22. On or about March 2, 2022, the Department discovered that Respondent was in violation of Part IV(5) of the Permit by failing to install fencing, screening, or netting around Lagoon Cell-2 to prevent livestock, wildlife, or migratory birds from accessing a pit or pond in which free oil is present. Respondent's failure to install fencing, screening, or netting around Lagoon Cell-2 is a violation of Neb. Rev. Stat. § 81-1506(3)(c).

IV. COMPLIANCE ORDER

23. IT IS HEREBY ORDERED that Respondent shall, by September 1, 2023:

- a.** Submit all delinquent Discharge Monitoring electronically via NetDMR;
- b.** With respect to Lagoon Cell-2:
 - i.** Repair or install new fencing, screening, or netting to prevent livestock, wildlife, or migratory birds, from accessing Lagoon Cell-2, unless such repair or installation has already been completed; and

- ii. In the manner prescribed in ¶ 23(c), provide the Department with photographic documentation that such fencing, screening, or netting has been repaired or installed; and
- c. Submit all required photographs via electronic mail to Brad Pracheil, Administrator, Inspection and Compliance Division (brad.pracheil@nebraska.gov).

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

24. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files a petition and requests, in writing, a hearing no later than thirty days after receipt of this Order. Failure to file a petition within thirty days shall be deemed an admission of the allegations made herein.

25. Any written petition and request for hearing with respect to this Order must conform to the requirements of Title 115 of the Nebraska Administrative Code.

26. The petition and hearing request may be filed via either:

- a. Postal mail to: Jim Macy, Director, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-8922, or
- b. Hand delivery to: Nebraska Department of Environment and Energy, 245 Fallbrook Blvd, Ste 100, Lincoln, NE 68521-6732.

VI. SETTLEMENT CONFERENCE

27. Whether or not Respondent requests a hearing, Respondent or Respondent's counsel may request an informal settlement conference by writing to Maxwell Anderson, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-8922.

28. A request for settlement conference does not extend the thirty day period during which a written petition and request for hearing must be submitted or otherwise delay the final effective date of this order.

VII. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

29. The Department reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil penalties or criminal prosecution for any violations that are the subject of this Order. Nothing in this Order precludes the Department from pursuing such enforcement. Failure to comply with this order may result in fines up to \$10,000 per violation per day, as set out in Neb. Rev. Stat. § 81-1508.02.

Dated this 13th day of July, 2023.


BY THE DIRECTOR


Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 13th day of July, 2023, upon the Respondent listed below:

Four W Oil Co., LLC
Thomas Witt, Registered Agent
112 W 17th St.
Falls City, NE 57244
USPS Label #9414811898765419993282


Lauren Triplett
Paralegal